Supreme Court, U.S.
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No. 97-69

In the

Supreme Court of the United States

October Term, 1997

HENRY LEE HUNT,
Petitioner,

v.

STATE OF NORTH CAROLINA,
Respondent.

On Petition For Writ Of Certiorari To The Superior Court Of North Carolina, Robeson County

BRIEF IN OPPOSITION

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QUESTION PRESENTED

WHETHER THE TRIAL COURT CORRECTLY DENIED PETITIONER'S *BRADY* CLAIM.

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BRIEF IN OPPOSITION

The Respondent, State of North Carolina [hereinafter "State"], by and through the Attorney General of North Carolina, Michael F. Easley, and Special Deputy Attorney General G. Patrick Murphy, requests this Court deny the Petition For Writ of Certiorari filed by Petitioner Henry Lee Hunt, alias "Mule", alias "Mulehead", alias "Buck" [hereinafter "Hunt" or "Petitioner"], seeking review of the

decision of the Superior Court, Robeson County, the Honorable B. Craig Ellis presiding, denying Petitioner's post-conviction *Brady* claim.

CITATION TO OPINION BELOW

The Order of the Superior Court, Robeson County, denying Hunt's *Brady* claim is reprinted in an appendix to Hunt's petition. The Order of the Supreme Court of North Carolina denying Hunt's petition for writ of certiorari to review the Order of the Superior Court is also reprinted in Hunt's appendix and is reported at *State v. Hunt*, 485 S.E.2d 304 (N.C. 1997).

JURISDICTION
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pursuant to Supreme Court Rules 15.2 and 24.2, these items are omitted since the Respondent is satisfied with Petitioner's Statement of Jurisdiction and Constitutional and Statutory Provisions Involved.

STATEMENT OF THE CASE

A. Procedural History

At the November 18, 1985 Session of Superior Court, Robeson County, Petitioner was convicted of two counts of first degree murder, N.C.G.S. § 14-17, and sentenced to death in each case. N.C.G.S. § 15A-2000. On direct appeal,

the Supreme Court of North Carolina affirmed Hunt's convictions and sentences. *State v. Hunt*, 323 N.C. 407, 373 S.E.2d 400 (1988). Hunt's petition for writ of certiorari to review the state court decision was granted in light of *McKoy v. North Carolina*, 494 U.S. 433 (1990), the judgments vacated and the case remanded for harmless error review of the penalty phase unanimity instruction. *Hunt v. North Carolina*, 494 U.S. 1022, 110 S. Ct. 1464, 108 L. E d. 2d 602 (1990). On remand, the Supreme Court of North Carolina found the penalty phase unanimity instruction harmless beyond a reasonable doubt and reinstated the judgments. Hunt's subsequent petition for writ of certiorari to review the state court's decision on remand was denied. *State v. Hunt*, 330 N.C. 501, 411 S.E.2d 806, *cert. denied*, 112 S. Ct. 3045, 120 L. Ed. 2d 913 (1992).

On December 3, 1992, Hunt filed a Motion For Appropriate Relief [hereinafter "MAR"] in Superior Court, Robeson County, pursuant to N.C.G.S. § 15A-1401, *et. seq.* The MAR raised numerous claims (Petitioner's Appendix at 3a-5a) including an allegation the Respondent failed "to disclose the fact that a witness saw A.R. Barnes leave the Mark IV Restaurant with Mr. Ransom [the first victim] shortly before Mr. Ransom supposedly was murdered." (Appendix at 1a-2a) The basis for this claim was *Brady v. Maryland*, 373 U.S. 83 (1963).

On June 2, 1994, the Superior Court entered an Order finding numerous claims in Hunt's MAR procedurally barred pursuant to N.C.G.S. § 15A-1419. Hunt's petition for writ of certiorari to review this Order was denied by the Supreme Court of North Carolina on August 10, 1994. *State v. Hunt*,

336 N.C. 783, 447 S.E.2d 436 (1994). The remaining claims were heard in Superior Court beginning September 30, 1994. At the close of the hearing, Hunt moved to amend his MAR to add the claim which is the subject of this petition. On September 16, 1996, the Honorable B. Craig Ellis entered an Order denying all claims in Hunt's MAR. Hunt's petition to review the Superior Court's Order was denied by the Supreme Court of North Carolina on April 10, 1997, *State v. Hunt*, 485 S.E.2d 304 (N.C. 1997). On July 9, 1997, Hunt's petition for writ of certiorari to review the part of the Superior Court's Order denying Hunt's amended *Brady* claim was docketed in this Court.

B. Factual Background

The Respondent's evidence at trial, relevant to this petition, showed that in the Summer of 1994 Dottie Ransom was married to two men, Rogers Locklear and Jackie Ransom. Dottie and Rogers discussed insuring Ransom's life, having him killed and using the policy proceeds to purchase a new home. Rogers testified that he first hired A.R. Barnes to kill Ransom, however, when A.R. did not carry out the plan, Rogers agreed to let A.R.'s brother, Elwell "Babe" Barnes, do the job for the agreed price, $2,000. Babe recruited Hunt and the two murdered Jackie Ransom on the evening of September 8, 1984. An autopsy showed Jackie died from a single .25 cal. gunshot wound to the head.

The next day, Rogers went to Hunt's mobile home. There, Hunt told Rogers, "I killed Jackie last night." Hunt then advised Rogers he wanted his money within 30 days or he would kill Rogers and Dottie. Ransom's body was found

in a wooded area of Lumberton later that day and Lumberton Police Department [hereinafter "LPD"] Detective Mike Stogner was assigned to the investigation. LPD requested the assistance of the State Bureau of Identification [SBI] and SBI Agent Lee Sampson was assigned. Between September 9 and September 14, 1984, the investigators were in contact with Larry Jones, an informant, concerning the murder of Jackie Ransom.

During the Summer and Fall of 1984, Hunt was living with Bernice Cummings, his girlfriend. Cummings testified at Hunt's trial that on September 10, she observed Hunt outside their residence speaking to one Buddy Row Bartley. Following the conversation, Hunt came inside and told her that Larry Jones was running his mouth, and that he "would put a stop to his damn mouth." At that time, Jones was living with Hunt's sister, Aggie Nora Hunt. Testimony at the MAR showed the investigators spoke to Jones several times between September 11 and 14 and on at least one occasion they went to Aggie Nora's house, identified themselves as law enforcement officers and asked her where they could locate Jones. (Appendix at 3a)

On September 14, Hunt told Cummings he was going to kill Jones because Jones was a "water-headed son-of-a bitch" going around running his mouth about Hunt having killed Ransom. Later that same day, Hunt's sisters, Aggie Nora and Annie Ruth, came to the residence of Cummings and Hunt. While there, Annie Ruth and Hunt went into a back room. When Hunt emerged, he said Jones was running his mouth and he was going to put a stop to it.

That evening, Hunt, Babe Barnes and Jerome Ratley dropped Cummings off at a bar and left the establishment in Cummings' vehicle. Ratley testified at trial that at Hunt's direction he drove to another location in Lumberton, picked up Larry Jones and on the pretext of obtaining marijuana the group traveled to Fairmont, North Carolina, a town approximately 10 miles from Lumberton. There, Hunt directed Ratley to drive to a secluded, wooded area where Ratley stopped the vehicle. When he did, Hunt turned towards the back seat and fired shots at Jones. When the shooting stopped, Ratley heard Hunt say, "You don't eat no more damn cheese for no damn body else. I'll meet you in heaven or hell, one." Wounded but not dead, Jones was pulled from the car. As Jones lay on the ground, Ratley heard him moan, "Mule, Mule, Mule." Hunt responded by firing additional shots into Jones' head. Hunt and Ratley then buried Jones' body in a shallow grave.

Hunt later gave the murder weapon, a .25 cal. Beretta, to his son-in-law to keep for him while Hunt was in prison on an unrelated drug charge. Ballistic tests established that the Baretta fired the bullets which killed each victim. Shell casings fired from the weapon were found on the ground at the location where Ratley said Jones was killed and a shell casing fired from the weapon was found in Cummings' vehicle. Additionally, prior to trial, Hunt sent a message to his brother, Wilbert, to get rid of Ratley as he, according to Hunt, was the only one who could really hurt him.

REASONS WHY PETITION SHOULD BE DENIED

I. THE SUPERIOR COURT PROPERLY DENIED HUNT'S *BRADY* CLAIM.

At the close of the MAR hearing, Hunt moved to amend his MAR to add an additional *Brady* claim. The evidence alleged to have been suppressed related to the fact Larry Jones, although working as an informant for law enforcement officers investigating the death of Jackie Ransom, never provided any information to them naming Hunt as Ransom's murderer. Hunt claims the Respondent's failure to disclose the fact Jones never named Hunt as the killer constitutes a *Brady* violation which requires a new trial. The Respondent contends Hunt's claim is meritless because: (1) the evidence (or lack thereof as the case may be) is not exculpatory or impeaching; (2) the evidence does not establish a *Brady* violation because there is no reasonable probability the information would have altered the outcome; and (3) both law enforcement officers who worked Jones as an informant testified at trial and were available to be questioned on this issue.

In *Brady v. Maryland*, 373 U.S. 83, 10 L. Ed. 215, 83 S. Ct. 1194 (1963), this Court held "that the suppression by the prosecution of evidence favorable to the accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. at 87, 83 S. Ct. at 1196-1197. *See Kyles v. Whitley*, 514 U.S. 419, 131 L. Ed. 2d 490, 505, 115 S. Ct. 1555 (1995). In *United States v. Bagley*, 473 U.S. 667, 87 L. Ed. 2d 481, 105 S. Ct. 3375

(1985), the Supreme Court held that favorable evidence is material, and constitutional error results from its suppression, "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." "A 'reasonable probability' of a different result is accordingly shown when the government's evidentiary suppression undermines confidence in the outcome of the trial." *Bagley*, 473 U.S. at 678. The Constitution is not violated every time the government fails or chooses not to disclose evidence that might prove helpful to the defense. *Bagley*, 473 U.S. at 675, and n. 7. Showing the prosecution knew of an item of favorable evidence unknown to the defendant does not amount to a *Brady* violation, without more. *Kyles*, 131 L. Ed. 2d at 508. The materiality of the evidence under *Bagley* is to be considered collectively, not item by item. *Kyles*, 113 L. Ed. 2d at 509. Consequently, the evidence allegedly suppressed must be considered collectively with all the evidence in the case to determine whether the allegedly suppressed evidence undermines confidence in the outcome to the point the verdict is unworthy of confidence.

The trial court found that the nondisclosure of the fact Jones did not name Hunt as Ransom's murdered in conversations with Stogner and Sampson was not exculpatory. The trial court's conclusion is absolutely correct. Although exculpatory and impeachment evidence fall within the purview of *Brady*, neutral evidence does not. *United States v. Dillman*, 15 F.3d 384 (5th Cir. 1994); citing *United States v. Johnson*, 872 F.2d 612, 619 (5th Cir. 1989). *See United States v. Rhodes*, 569 F.2d 384, 388 (5th Cir.), *cert. denied*, 439 U.S. 844, 99 S. Ct. 138, 58 L. Ed. 2d 143 (1978) (holding prosecutor had no *Brady* duty to disclose that a

certain eyewitness could not positively identify the defendant). In *Dillman*, the Court held a witnesses' withheld statement - to the effect that she did not remember a meeting at which conspirators agreed to an illegal scheme - was neutral, not exculpatory or impeaching in nature. Another example of neutral evidence is found in *United States v. Zuno-Arce*, 44 F.3d 1420 (9th Cir. 1995). There, the defendant was convicted of conspiracy for his part in an international narcotics enterprise which resulted in the kidnapping, torture, interrogation and murder of a DEA agent. The defendant argued the prosecutor violated *Brady* by failing to disclose the statement of a witness who was present at the interrogation of the victim. In the statement, the witness failed to name the defendant as one of several persons present during the interrogation. Defendant argued the failure to name him as present tended to show he was not there. The court rejected this argument. Not every witness who fails to inculpate a defendant should be treated as exculpatory. *Id.* at 1426. *See United States v. Bryan*, 868 F.2d 1032, 1037 (9th Cir.), *cert. denied*, 493 U.S. 858, 110 S. Ct. 167, 107 L. Ed. 2d 124 (1989). This Court has held that due process does not require the State to make complete disclosure to the defendant of all of the investigative work on a case. *Moore v. Illinois*, 408 U.S. 786, 33 L. Ed. 2d 706, *reh'g denied*, 409 U.S. 897, 34 L. Ed. 2d 155 (1972). If information or evidence is not exculpatory, the State need not produce the same. To hold otherwise would impose an insuperable burden on the State to determine what facially non-exculpatory evidence might possibly be favorable to the accused by inferential reasoning. *United States v. Comosona*, 848 F.2d 1110, 1115 (10th Cir. 1988).

Hunt accuses the trial court of taking "much too narrow a view of 'evidence favorable to the accused'." (Petition at p. 7) The opposite is true, Hunt takes much too broad a view. Under the standard Hunt supports any evidence which is not inculpatory by his view is exculpatory or favorable. This simply is not true. The authorities cited above recognize neutral evidence is not covered by the *Brady* umbrella.

Hunt first argues the failure of Jones to name Hunt in discussions with investigators undermines the Respondent's theory regarding Hunt's motive to murder Jones. It is true the Respondent's theory was that the killing of Jones was a witness elimination murder, however, Jones' failure to name Hunt as Ransom's murderer does nothing to impeach this theory or the Respondent's evidence. Cummings testified to several statements Hunt made concerning his intent to "shut Jones' mouth." Jerome Ratley witnessed the murder and testified Hunt stated immediately afterwards, "You don't eat no more damn cheese for no damn body else. I'll meet you in heaven or hell one." Jones was living with Hunt's sister at the time and the investigator's interest in Jones did not go unnoticed by Aggie Nora or Hunt. It is wholly unremarkable that Jones did not name Hunt to investigators. Detective Stogner testified at the MAR he believed Jones "was playing [him] as informants will do." Jones wanted "a reward for information that he may know about the case, and I refused to give him one because I felt like he was playing me." (Appendix at 4a-5a) Under Hunt's theory, if a person made a particular statement to nine people but did not mention it to the tenth, the failure to do so is exculpatory. Suffice it to say, the trial court was correct in concluding the failure to name

Hunt as Ransom's murderer was not exculpatory evidence within the meaning of *Brady*.

Hunt next contends the information would have bolstered the testimony of Aggie Nora. The problem is Aggie Nora did not testify at trial so there was nothing to bolster. Hunt's trial counsel testified at the MAR that Aggie Nora did not want to testify at trial and that he was concerned putting her on the stand would corroborate the State's evidence that she was discussing Jones' contacts with law enforcement with Hunt. (Petitioner's Appendix at 37a) Thus, Hunt's argument that the evidence would have corroborated or bolstered the testimony of Aggie Nora is meritless.

Any impeachment value of the evidence as it relates to the testimony of Cummings would have been *de minimis*. Notwithstanding the benign nature of the evidence, the evidence would have added virtually nothing to the commendable job trial counsel did during cross-examination of Cummings. (Petitioner's Appendix at 84a) (Counsel's cross-examination of State's witnesses was entirely competent and brought considerable impeaching information to the attention of the jury).

Finally, there is no chance the evidence in question would have made any difference in this case. Stated another way, the evidence does not undermine confidence in the verdict. The facts of the murders are outlined in detail in the trial court's Order. (Petitioner's Appendix at 5a-21a) As stated by the Supreme Court of North Carolina on remand, "[s]imply put, the evidence of defendant's guilt in this case is

overwhelming." *State v. Hunt*, 330 N.C. 501, 411 S.E.2d 806, *cert denied*, 112 S. Ct. 3045, 120 L. Ed. 2d 913 (1992).

CONCLUSION

This Court's due process analysis applicable to *Brady* claims is well-established and the issue in this case would add nothing to the jurisprudence in this area of the law. The trial court's conclusion is correct that the evidence in question is not exculpatory. Nonetheless, the overwhelming evidence of guilt firmly demonstrates the result of Hunt's trial is solidly reliable. Hunt has failed to establish a *Brady* violation so Respondent respectfully requests this Court deny Hunt's petition.

Respectfully submitted, this 8th day of August, 1997.

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APPENDIX

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Claim IV of Hunt's MAR

IV. THE STATE FAILED TO DISCLOSE EXCULPATORY EVIDENCE.

180. The State's failure to disclose the fact that a witness saw A.R. Barnes leave the Mark IV Restaurant with Mr. Ransom shortly before Mr. Ransom supposedly was murdered violated Mr. Hunt's right to due process and a fair trial under the principles of *Brady v. Maryland*, 373 U.S. 83 (1963), and subsequent cases; it was in specific violation of his rights under the Fifth and Fourteenth Amendments to the Constitution of the United States and of Article I, Sections 19 and 36 of the Constitution of the State of North Carolina.

181. The State was required to disclose to Mr. Hunt's counsel all exculpatory evidence known to it. In addition, counsel made a request for discovery pursuant to N.C. Gen. Stat. § 15A-902 prior to trial. In response to that request, the State provided Mr. Hunt's counsel with access to various items, including copies of A.R. Barnes's confessions made to the investigating officers.

182. At no time did the State disclose to Mr. Hunt's counsel that a witness had reported to the police that A.R. Barnes had been seen with Mr. Ransom shortly before he was murdered, although this fact was disclosed to the newspapers. (*See* Affidavit of Jay Holtmeier ("Holtmeier Aff."), sworn to December 2, 1992, attached hereto as Appendix C).

183. This evidence, especially the identity of the witness, would likely have been of great importance to Mr.

Hunt's counsel, tending to corroborate Mr. Barnes's confession. Under the principles of *Brady v. Maryland*, 373 U.S. 83 (1963), and subsequent cases, the evidence was required to be disclosed to Mr. Hunt's counsel if it was exculpatory. There can be no doubt that it was.

184. It is beyond question that the failure to disclose this exculpatory evidence worked to Mr. Hunt's extreme prejudice. There were other examples of *Brady* violations each of which deprived Mr. Hunt of significant information that he could have used in his defense.

Testimony of SBI Special Agent Lee Sampson

Q. Let me ask you some more about Mr. Jones and your context with him. Before the break, I was asking you had you ever been over to Aggie Nora's house in reference to talking with Mr. Larry Jones between September 11th and September 14th of 1984?

A. Yes, I did, along with Detective Stogner.

Q. All right. So you went over and talked with Aggie Nora – Aggie Nora Hunt?

A. I'm not sure. Our purpose there was to find Larry Jones but she was at the residence. It's her residence.

Q. Did you actually see her?

A. Yes, we did.

Q. And you were there looking for Larry Jones?

A. Yes. We talked with her and asked her if Larry was there, and she got him for us.

Q. Okay. So she -- she at least knew -- did you identify yourself as law enforcement officers or anything?

A. Yes, we did.

Q. So she knew some law enforcement officers wanted to talk to Larry Jones?

A. That's correct.

Q. And you know, of course, Larry Jones was living with Aggie Nora during that time?

A. Yes, he was.

Testimony of Michael Stogner

Q. -- between Jackie Ransom's death and Larry Jones' disappearance?

A. I may have asked her if he had told her anything. If he had told me anything, I certainly would not have told her --

Q. Okay.

A. -- what he had told me.

Q. So your recollection is that you wouldn't have told Aggie Nora Hunt anything that Larry Jones had told you?

A. No, sir, absolutely not.

Q. Okay. After Larry Jones disappeared, did you -- did you go back to Aggie Nora Hunt's house and ask her any questions about what had gone on in the week between these two incidents, between Jackie Ransom's death on the 8th or the 9th and Larry Jones' disappearance a week later?

A. The last time I spoke with Larry Jones, and I remember it distinctly, was that Friday before he was killed, that afternoon, late that afternoon. And he got very upset with me because he wanted a reward for information that he may know about the case, and I refused to give him one because I felt like he was playing me as -- as informants will do sometimes, and I refused to give him one.

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